



California Fair Political Practices Commission

August 27, 1986

Carl O. Waggoner
Barker, Waggoner & Newman
3340 Tully Road, Suite A
Modesto, CA 95350-0894

Re: Your Request for Advice
Advice No. I-86-208

Dear Mr. Waggoner:

You have written requesting confirmation of our telephonic general guidance as to a possible conflict of interest situation involving a prospective School Board member. Because your request is made on behalf of an unidentified requestor, we will treat it as a request for Informal Assistance under regulation 2 Cal. Adm. Code Section 18329 (copy enclosed).

QUESTION

You indicated that a particular individual is being considered for appointment to the Board of Trustees of a local school district. This individual's spouse is a regular member of the classified service of the school district and has been employed as such for a four-year period. You are wondering whether the individual, if appointed, can participate in decisions that would in some manner financially affect his wife. You have asked:

1. Is this individual precluded from participating in any decisions that financially affect the entire classified service?

2. If the answer to number one is no, is he precluded from participating in any decisions that will in some way financially affect his wife in a manner different from the other employees, for example, a pay raise not given the rest of the classified service or a promotion given specifically to his wife?

CONCLUSIONS

1. He would not be precluded from all decisions. Regulation 2 Cal. Adm. Code Section 18702.1 (copy enclosed) allows an official to participate in making a governmental decision if its effects on the official or a member of his immediate family will not be distinguishable from its effect on all other employees in the classified service.

2. He will be disqualified from decisions specifically and singularly affecting his spouse. Because his wife would be affected

Carl O. Waggoner
August 27, 1986
Page Two

in a manner different than all other employees in the classified service, your client would have to disqualify himself from voting under Section 18702.1.

ANALYSIS

We provide advice only regarding the Political Reform Act.^{1/} However, we can note that Government Code Section 1090 may be relevant to your situation. Please consider the enclosed Attorney General's Opinions No. 85-1105 and No. 82-203, along with Thompson v. Call (1985) 38 Cal. 3d 633 for information regarding application of Section 1090 we understand that you have already taken appropriate steps along those lines.

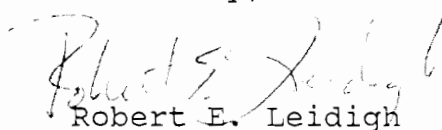
Section 87100 provides that a public official may not make, participate in making, or in any way attempt to use his or her position to influence a governmental decision in which he or she has a financial interest.

An official has a financial interest in a decision within the meaning of Section 87100 if it is reasonably foreseeable that the decision will have a material financial effect, distinguishable from its effect on the public generally, on the official or a member of his or her immediate family. Section 87103.

In the instant situation, the prospective School Board member would not have to disqualify himself from a decision that would affect the entire classified service, and would not distinguish his wife from the remainder of the classified employees. However, a decision that would distinguish his wife, such as a pay raise not given to others, or a promotion, would require disqualification under Regulation 18702.1(c)(2) (see the enclosed letters to Lance Olson and Robert Calfee).

I trust that the foregoing has been of assistance to you. Should you have further questions about the Political Reform Act, I may be reached at (916) 322-5901.

Sincerely,


Robert E. Leidigh
Counsel
Legal Division

REL:MS:km
Enclosures

^{1/} Government Code Sections 81000-91015. All statutory references are to the Government Code unless otherwise indicated.

BARKER, WAGGONER & NEWMAN
A PROFESSIONAL LAW CORPORATION
3340 TULLY ROAD - SUITE A
MODESTO, CALIFORNIA 95350-0894
(209) 521-9521

H. E. BARKER, JR.
CARL O. WAGGONER
RUSSELL A. NEWMAN
JAY R. MILLER

F P F L
JUN 23 8 30 AM '86

June 18, 1986

Robert Leideigh, Esq.
Fair Political Practice Commission
Post Office Box 807
Sacramento, California 95804-0807

Re: Conflict of Interest - Prospective Member of School Board

Dear Mr. Leideigh:

I am writing in response to our telephone conversation of yesterday, during which I informed you that a particular individual is being considered for appointment to the Board of Trustees of a local school district. This particular individual's spouse is a regular member of the classified service of the school district and has been employed as such for a period of four years.

A question has arisen as to whether or not the individual, if appointed, can participate in decisions which would in some manner financially affect his wife. It appears to me that there are in essence two issues. First, is this individual precluded from participating in any decisions which financially affect the entire classified service? Second, if not, is he precluded from participating in any decisions which will in some way financially affect his wife in a manner different from the other employees, an example being a raise in pay not given the rest of the classified service or a promotion given specifically to this individual's spouse?

This particular school district has an average daily attendance of approximately 1,300 pupils. It has 130 employees, of whom 50 are in the classified service.

If you have any questions concerning the foregoing, please contact me. I would appreciate a response to this request at your earliest convenience, as the school district will be considering the appointment in early July, and this individual's inability to participate in decisions regarding the classified service is a factor the Board of Trustees would consider in making the appointment.

Very truly yours,



CARL O. WAGGONER

CW:ds

MAILED IN
ATTORNEY'S ABSENCE
TO AVOID DELAY



California Fair Political Practices Commission

June 25, 1986

Carl O. Waggoner
Barker, Waggoner & Newman
3340 Tully Road, Suite A
Modesto, Ca 95350-0894

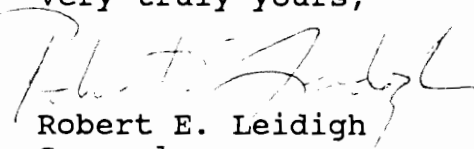
Re: 86-208

Dear Mr. Waggoner:

Your letter requesting advice under the Political Reform Act has been received on June 23, 1986 by the Fair Political Practices Commission. If you have any questions about your advice request, you may contact me directly at (916) 322-5901.

We try to answer all advice requests promptly. Therefore, unless your request poses particularly complex legal questions, or unless more information is needed to answer your request, you should expect a response within 21 working days.

Very truly yours,


Robert E. Leidigh
Counsel
Legal Division

REL:plh

MONTHLY OPINION REPORT



JOHN K. VAN DE KAMP
Attorney General

NELSON P. KEMPSKY
Chief Deputy

JACK R. WINKLER
Chief of Opinion Unit

OPINION UNIT ATTORNEYS

Anthony Davigo
Rodney Lilyquist
John Murphy
Clayton Roche
Ronald Weiskopf



SACRAMENTO, CALIFORNIA

MAY 1, 1986

CONCLUSIONS IN OPINIONS ISSUED IN APRIL 1986

- 85-404 - Labor Code sections 1101 and 1102 prohibit a private employer from discriminating on the basis of homosexual orientation or affiliation.
- 85-601 - A California magistrate may authorize the installation of a pen register by the issuance of a search warrant.
- 85-1002 - The term "full cash value" as used in Government Code section 51283 does not have the same meaning as the definition set forth in Revenue and Taxation Code section 110.1.
- 85-1005 - Government Code section 24050 imposes personal liability upon a county officer for the reasonable value of the services falling within his statutory duties which remain uncompleted at the expiration of his term of office only to the extent fees were paid to and retained by the officer to perform the particular services.
- 85-1103 - Except as provided in Education Code sections 46616 and 46619, a school district which accepts students from a neighboring school district may not charge the latter district for the actual costs of educating the students.
- 86-107 - A 12-year-old Arabian stallion which has never raced and which has sired several foals none of which has ever raced, is nonetheless eligible for in-lieu taxation under part 12 of the Revenue and Taxation Code if he was used for breeding purposes during the previous two calendar years in order to produce progeny that would race. That is a question of fact for the assessor to determine from all the evidence.

QUESTIONS SUBMITTED IN OPINION REQUESTS ASSIGNED IN APRIL 1986

VIEWS SOLICITED: The Attorney General welcomes and solicits the views of any interested person upon the legal issues raised in any question submitted for an opinion. Such views should be submitted in writing to the deputy to whom the opinion is assigned. The earlier such views are submitted, the more opportunity there will be to consider them in the opinion drafting and review process.

Op. No. 86-406 concerning Health and Safety Code section 13145, et seq.
requested by the State Fire Marshal

Must a public utility district which owns fire fighting equipment which is operated by an unpaid volunteer fire department as needed enforce the building standards for fire and panic safety adopted by the State Fire Marshal within the district as provided in Health and Safety Code section 13145, et seq., and if not, may the State Fire Marshal do so?

Assigned to Deputy Attorney General Ronald M. Weiskopf, 110 West A Street, Suite 700, San Diego, CA 92101

OPINION DISPOSITIONS IN APRIL 1986

85-404	Issued	April 30, 1986
85-601	Issued	April 11, 1986
85-1002	Issued	April 22, 1986
85-1005	Issued	April 22, 1986
85-1103	Issued	April 30, 1986
86-107	Issued	April 30, 1986

OPINIONS PENDING MAY 1, 1986

85-107 Re assignments and supervision of level III reserve peace officers.
85-801 May law enforcement agency record calls to agency phones with consent?
85-802 May person arrested on a failure to appear warrant be released on his promise to appear?
85-803 What state agencies hear appeals on fire safety standards for hospitals?
85-903 Re access to CPP data on transporters of hazardous materials.
85-905 May ABC revoke liquor license of private club that discriminates?
85-1001 Six questions regarding Fish and Game privilege taxes.
85-1101 May ABC adopt regulation to allow Calif. Retailer to store its tax paid liquor out of state?
85-1102 Does P.C. s. 70(d) prevent peace officer off-duty job as private patrolman in civilian clothes?
85-1104 Is redevelopment agency's reimbursement of developer's cost a gift of public funds?
85-1105 Does Govt. C. s. 1090 prohibit teacher's bargaining agreement when trustee & teacher are married?
85-1201 Must probation officer file child abuse report for force used in arresting a juvenile?
85-1203 May school board approve use of facilities for passage of school measure?
86-101 May counties with pre-1984 merger ordinance continue to merge resource lands?
86-103 Does putting refusal to sign campaign ethics code on ballot violate free speech guarantees?
86-104 May school board prohibit use of school mail facilities for school trustee campaigns?
86-105 Does blind person with guide dog have access to medical facilities under Civil Code s. 54?
86-108 May association of resource conservation districts incorporate to reduce district liability?
86-109 Can the Advisory Counsel remove directors of the Yuba County Water Agency?
86-201 Do military leave and pay laws for public employees apply to State Military Reserve?
86-202 Must release of mechanics lien be acknowledged to be recorded?
86-203 May a city council hold a closed session to discuss a tentative cease and desist order?
86-204 Does the Veh. Code s. 27315 seatbelt use law apply to police cars transporting prisoners?
86-205 Do Govt. Code s. 66780.5 plan amendment rules apply to a bi-county solid waste plan?
86-206 Do new or reorganized districts contribute to Special District Augmentation Fund?
86-301 May homeless out-of-state child be placed in foster home by Juvenile Ct. at public expense?
86-302 May registered nurse perform laboratory tests?
86-303 At what election must ten months rule appointee to municipal court run for a new term?
86-304 Must restriction for low income housing by city using federal funds last thirty years?
86-401 Does Govt. C. s. 1090 prohibit school board from employing board member's spouse for different job?
86-402 Is sale of new car at a fair subject to new dealership requirements of Veh. C. s. 3062(a)?
86-403 May Dept. of Forestry provide rescue and first aid services to public when not related to a fire?
86-404 Must county counsel provide legal opinion to an individual school trustee?
86-405 May State Allocation Board refuse portable classrooms for community & juvenile court schools?
86-406 Must P.U.D. with unpaid volunteer fire dept. enforce building standards for fire safety?

JOHN K. VAN DE KAMP
Attorney General

State of California
DEPARTMENT OF JUSTICE



May 22, 1986

F P P C
MAY 27 8 35 AM '86

350 McALLISTER STREET, ROOM 6000
SAN FRANCISCO 94102
(415) 557-2544

(415) 557-1586

Barbara Milman, Esq.
General Counsel
Fair Political Practices Commission
P. O. Box 807
Sacramento, CA 95804

Dear Ms. Milman:

Re: Opinion No. 86-401


Enclosed is an opinion request we have received from Assemblyman Byron D. Sher. The request consists of an original request dated February 13, 1986 and a supplemental request dated February 27, 1986. Also enclosed is our partial informal response to the initial request, dated February 27, 1986.

We delayed requesting the views of interested parties until we issued Opinion No. 85-1105, which also involves the changes from the Education Code conflict of interest provisions to section 1090 of the Government Code. A copy of that opinion, issued May 14, 1986 is also enclosed.

You are invited to submit whatever views you may have on the questions presented.

Very truly yours,

JOHN K. VAN DE KAMP
Attorney General


CLAYTON P. ROCHE
Deputy Attorney General

CPR:mrf
Enclosures

CAPITOL OFFICE
STATE CAPITOL
SACRAMENTO CA 95814
(916) 445 7632

DISTRICT OFFICE
785 CASTRO STREET
SUITE C
MOUNTAIN VIEW CA 94041
(415) 961-6031

ADMINISTRATIVE ASSISTANT
BETSY BLAIS SHOTWELL

Assembly California Legislature

BYRON D. SHER
ASSEMBLYMAN TWENTY FIRST DISTRICT

COMMITTEES

CHAIRMAN
NATURAL RESOURCES

MEMBER
CONSUMER PROTECTION
ENVIRONMENTAL SAFETY &
TOXIC MATERIALS
POLICY RESEARCH
REVENUE & TAXATION
UTILITIES & COMMERCE

SUBCOMMITTEE ON TIMBER
JOINT COMMITTEE ON
THE ARTS
JOINT COMMITTEE ON
PRISON CONSTRUCTION &
OPERATIONS

312

February 27, 1986

John Van de Kamp
Attorney General
1515 K Street, Suite 511
Sacramento, Ca 95814

Dear John:

I wrote you a letter dated February 21, 1986, requesting a written opinion relating to a conflict of interest question under the Government Code. School board members were recently brought under the Government Code conflict of interest provisions by virtue of my AB 1849, Ch. 816, 1985 Statutes.

Just after my letter was mailed, I received the enclosed letter raising additional questions about the Government Code conflict of interest provisions as they relate to a school board member whose spouse is employed by the school district. The questions are succinctly stated on page 2 of the enclosed letter.

I would like to broaden my initial request and ask you to give me a written opinion on the questions raised in the enclosed letter, as well as the question asked in my letter of February 21. I look forward to receiving your opinion and want to thank you in advance for your cooperation in this matter.

Sincerely,



BYRON D. SHER, Assemblyman
21st District

BDS:jim
Enclosure

RECEIVED

MAR 2 1986

BREON, GALGANI, GODINO & O'DONNELL

A PARTNERSHIP INCLUDING PROFESSIONAL CORPORATIONS
ATTORNEYS AT LAW

KEITH V. BREON
ROBERT A. GALGANI
RICHARD V. GODINO
MARGARETE O'DONNELL
DIANA K. SMITH
LOUIS T. LOZANO
PRISCILLA BROWN
DAVID G. MILLER
SANDRA WOLVER
MARK W. GOODSON
GREGORY J. DANNIS

CELIA RUZ
STEVEN KAISER
SHARON M. KEYWORTH
EMIL R. UYEHARA
KERRY CUNNINGHAM
SUSANNE K. REED
MARK G. INTIERI
DANIEL R. FRITZ
BARBARA J. BOOTH
BRIDGET A. FLANAGAN

A PROFESSIONAL CORPORATION

February 20, 1986

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FEB 21 1986

22nd FLOOR THE SHELL BUILDING
100 RUSH STREET
SAN FRANCISCO CA 94104
(415) 788-4999

5777 MADISON AVE. SUITE 310
SACRAMENTO CA 95841
(916) 334-5694

1539 FIFTH AVENUE
SAN RAFAEL CA 94901
(415) 459-3008

925 "N" STREET, SUITE 130
FRESNO CA 93721
(209) 445-1352
VISALIA CA
(209) 625-2666

2550 VIA TEJON, SUITE 3A
P.O. BOX 7000-267
PALOS VERDES CA 90274
(213) 373-6857
LOS ANGELES CA
(213) 642-1123

COSTA MESA CA
(714) 662-6977

SAN FRANCISCO

REPLY TO

Assemblyman Byron Sher
785 Castro Street, Suite C
Mountain View, CA 94041

Re: School Board Member Conflict of Interest; AB 1849

Dear Assemblyman Sher:

In speaking with your office, our firm has been advised that you are considering requesting an opinion from the Attorney General concerning Government Code section 1090, et seq. and the conflict of interest provisions as applicable to school board members.

Our law firm represents school boards throughout the state and issues concerning the new law have arisen with board members in several of our client school districts. Particular issues concerning Government Code section 1091.5 and the permissible spousal relationships have come up repeatedly. Because of the recurrence of particular questions and their importance for schools board members throughout the state, we feel a definitive opinion from the Attorney General is important.

We are aware that the Yolo County Counsel's office has submitted a request for an opinion on section 1090 (Op. No. 85-1105, assigned in November 1985). That request concerns the board member's interest in the collectively bargained agreement with the bargaining unit of the employee/spouse and the board member's participation in negotiations for the agreement. Additional issues have arisen, however, that are not presented in the Yolo County Counsel's request. These issues involve the board member's interest in the individual employment contract of the employee/spouse.

Assemblyman Byron Sher
February 20, 1986
Page 2

Because these particular issues are causing concern for several board members throughout the state, we would ask that you include the following in any opinion request submitted by your office:

Does a prohibited interest in a contract exist in the following circumstances:

1. A spouse has been employed by a school district for several years prior to the board member's election or appointment. After the member's election or appointment the spouse seeks a promotion or another employment position with the district.
2. A spouse has been employed as a substitute teacher by a school district for several years. After the board member's election or appointment the spouse wishes to continue annual employment as a substitute teacher in the district or the spouse applies for a permanent employment position in certificated or classified service for the district.

If you have any questions or would like to discuss the matter further, please do not hesitate to contact me.

Very truly yours,

BREON, GALGANI, GODINO & O'DONNELL


Kerry Cunningham

KC:jr

JOHN K. VAN DE KAMP
Attorney General

State of California
DEPARTMENT OF JUSTICE



1515 K STREET, SUITE 511
SACRAMENTO 95814
(916) 445-9555
(916) 324-5166

February 27, 1986

Honorable Byron D. Sher
Member, California State Assembly
State Capitol, Room 2136
Sacramento, California 95814

Dear Assemblyman Sher:

This is in reply to your February 13 request for an opinion interpreting Government Code section 1090. You indicate that as a result of your AB 1849 enacted as Chapter 816, Statutes of 1985, Education Code section 35233 now provides that article 4 (commencing with section 1090) and article 4.7 (commencing with section 1125) of Division 4, Title 1 of the Government Code are now applicable to members of the governing boards of school districts.

Your February 13 letter stated that a school board president recently resigned in order that his wife could be hired by the school district upon advice from the county counsel that she could not be hired while he was a member of the board. You indicated your understanding while AB 1849 was under legislative consideration that under the Government Code a local elected official with a conflict of interest on a matter before the body was simply required to refrain from participating in the matter in any way and to refrain from voting, and that there was no requirement that he or she resign from the body. You ask that we provide you with an opinion as soon as possible whether this is true.

In our view it is not true that Government Code section 1090 is satisfied by abstention from any board action on the contract in which a board member has a financial interest. Section 1090 renders any contract made by a board when a member of the board has a financial interest in the contract void.

Government Code section 1090 provides that the officers named "shall not be financially interested in any contract made by them in their official capacity, or by any body or board of which they are members". Thus the section literally proscribes contracts by a board when any member of the board has a financial interest in the contract, whether or not the interested member abstains.

Assemb. Byron D. Sher

Honorable Byron D. Sher
Page 2
February 27, 1986

Under Civil Code section 5110, with few exceptions, each spouse has a half (community property) interest in the earnings of the other spouse acquired during the marriage. (Martin v. Southern Pacific Co. (1900) 130 Cal. 285.) Thus a school board member would normally have a financial interest in his or her spouse's earnings under an employment contract.

Statutes prohibiting conflict of interest by a public officer are strictly enforced. (Terry v. Bender (1956) 143 Cal.App.2d 198.) The purpose of Government Code section 1090 is not only to strike at actual impropriety, but also to strike at the appearance of impropriety. (City of Imperial Beach v. Bailey (1980) 103 Cal.App.3d 191.) In 14 Ops.Cal.Atty.Gen. 78 (1949) we said that the purpose of section 1090 is to prohibit a board charged with making state purchases from entering into a contract in a dual capacity.

In Stigall v. City of Taft (1962) 58 Cal.2d 565, a city advertised for bids on plumbing work and a company in which a city councilman had a substantial financial interest submitted the lowest bid. When conflict of interest objections were raised the matter was put over to the next meeting. At the next meeting the councilman in question submitted his resignation and thereafter the council awarded the contract to the lowest bidder. In an action to invalidate the contract the Supreme Court held that the prohibition of Government Code section 1090 against "making" a contract in which a member is financially interested embraces the negotiations leading up to the final award of the contract. The court observed:

"Conceding that no fraud or dishonesty is apparent in the instant case, the object of the enactments is to remove or limit the possibility of any personal influence, either directly which might bear on an official's decision, as well as to void contracts which are actually obtained through fraud or dishonest conduct."

A copy of the Stigall case is attached.

In Thompson v. Call (1985) 38 Cal.3d 633, the city council indicated an interest in acquiring land owned by a council member for park purposes. The landowner councilman conveyed the land to a development company which then conveyed the land to the city. The court held the transaction violated

Honorable Byron D. Sher
Page 3
February 27, 1986

Government Code section 1090 since the company was just the conduit by which the councilman sold the property to the city. The court held the city was to keep the property and judgment against the councilman to repay the \$258,000 purchase price to the city was affirmed. The court observed:

"Moreover, California courts have consistently held that the public officer cannot escape liability for a section 1090 violation merely by abstaining from voting or participating in discussions or negotiations."

A copy of the Thompson case is attached.

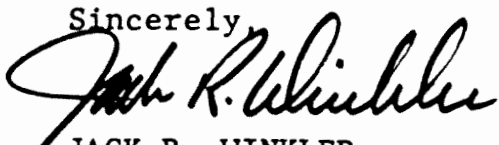
In January 1977 this office issued a document entitled, "Conflict of Interest Laws Applicable to Government Agencies". (A copy of pages 61 and 62 of that document is attached) In discussing Government Code section 1090 we stated on page 62 of that document:

"Unlike the PRA and section 8920 et seq. which permit abstention, section 1090 constitutes an absolute prohibition. Thus, if a board member has a conflict, and a 'remote interest' exception is not applicable (to be discussed infra), the board may not validly enter into a contract even if the member discloses his conflict and abstains. This distinction must be kept in mind when one considers both the section 1090 proscription, and the sanctions applicable to a violation of its provisions."

The foregoing authorities support our view that abstention from participation in the making of a contract in which a school board member has a financial interest does not satisfy the requirements of Government Code section 1090.

I trust the foregoing provides the advice you requested. If I may be of assistance on this matter, please do not hesitate to call.

Sincerely,



JACK R. WINKLER
Assistant Attorney General

CAPITOL OFFICE
STATE CAPITOL
SACRAMENTO CA 95814
(916) 445 7632

DISTRICT OFFICE
785 CASTRO STREET
SUITE C
MOUNTAIN VIEW CA 94041
(415) 961 6031

ADMINISTRATIVE ASSISTANT
BETSY BLAIS SHOTWELL

Assembly California Legislature

BYRON D. SHER
ASSEMBLYMAN TWENTY FIRST DISTRICT

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CHAIRMAN
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• John Van de Kamp
Attorney General
1515 K Street, Suite 511
• Sacramento, Ca 95814

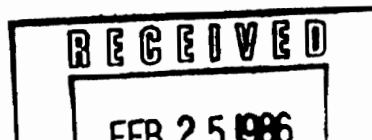
Dear John:

I am writing to request a written opinion regarding Government Code conflict of interest provisions for local elected officials.

Legislation that I authored which took effect on January 1 (AB 1849, Ch. 816, 1985 Statutes) brought school board members under the conflict of interest provisions in the Government Code that govern all other local elected officials. Previously, school board members were governed by provisions in the Education Code.

It recently came to my attention that a school board president resigned from office on the advice of the county office of education's legal counsel so that his wife could accept a teaching position with the district. The board president was advised that, based on a California Supreme Court decision (Thompson v. Call, 214 Cal. Rptr. 139, [Cal. 1985]), his mere presence on the board would constitute an unlawful conflict of interest under the Government Code if his wife was hired as a district employee. I have enclosed some correspondence which describes this incident in greater detail.

It was my understanding when AB 1849 was under legislative consideration that under the Government Code a local elected official with a conflict of interest on a matter before the body was simply required to refrain from participating in the matter in any way and to refrain from voting, and that there was no requirement that he or she resign from the body. Please provide me with an opinion as soon as possible on whether this is true, or whether an elected official's mere presence on a governing board constitutes an unlawful conflict of interest under the Government Code so that he or she must resign from the board.



RECEIVED

Thank you in advance for your assistance.

Sincerely, .

A handwritten signature in black ink, appearing to read "Byron".

BYRON D. SHERR, Assemblyman
21st District

BDS:jm
Enclosures

cc: Keith Hayenga

→ phone:
(P. 8628 re H. Thompson - not in f. 60

→ if the situation does arise (by them picking this administrator),
be aware of the consequences -- see enclosed
- direct him to the forthcoming opinion requested by assemblyman.
Byron D. Sher, Op No. SC-401